



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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May 29, 2024

By ECF

Hon. Judith C. McCarthy
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: *Safranek v. Wormuth, et al.*, No. 23 Civ. 5985 (JCM)

Dear Judge McCarthy:

This Office represents defendants Hon. Christine E. Wormuth, Secretary of the Army, and Lt. Gen. Steven W. Gilland, Superintendent at West Point Military Academy (together, the “Government”), in the above-referenced action brought by plaintiff Austin A. Safranek (“Plaintiff”). Pursuant to the Court’s direction at the conference on May 22, 2024, I write jointly with Plaintiff’s counsel respectfully to provide a proposed briefing schedule for Plaintiff’s contemplated application for attorney’s fees and expenses pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. In addition, the parties respectfully request that the Court so-order the Stipulation and Order of Dismissal filed concurrently herewith.¹

The parties propose the following briefing schedule for Plaintiff’s EAJA fee application:

- Plaintiff’s motion papers filed on or before June 28, 2024;
- Government’s opposition papers filed on or before by July 19, 2024; and
- Plaintiff’s reply filed on or before August 2, 2024.

¹ The stipulation of the parties provides that the case is dismissed with prejudice; provided that the Court retains jurisdiction to decide Plaintiff’s EAJA fee application. The stipulation and order of dismissal is the necessary “final judgment in the action” which allows for an application pursuant to the EAJA. *See, e.g., Info Labs, Inc. v. United States Citizenship & Immigr. Servs.*, No. 19 Civ. 684 (RC), 2020 WL 6445868, at *3 (D.D.C. Nov. 3, 2020) (joint stipulation of dismissal with prejudice represents non-appealable final judgment for purposes of EAJA) (citing 28 U.S.C. § 2412(d)(2)(G)).

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We thank the Court for its consideration of this request.

Respectfully submitted,

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